

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LLE ONE, LLC, *et al.*,

Plaintiffs,

-against-

FACEBOOK, INC.,

Defendants.

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Case No 1:18-mc-0503-JMF

(Related to Civil Action 4:16-cv-06232, N.D.
Cal.)

REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO ENFORCE THE SUBPOENAS

Plaintiffs in the matter of *LLE ONE, LLC, et al. v. Facebook, Inc.*, 4:16-cv-06232 (N.D. Cal.) (“Plaintiffs”) submit this reply in support of their pending motion to enforce subpoenas served on non-parties (1) Helen Lin (Publicis Media’s Chief Digital Officer); (2) Publicis Media, Inc.; (3) Starcom MediaVest Group, Inc., (4) Zenith Media Services, Inc., (5) MediaVest Worldwide, Inc., and (6) Digitas, Inc. (collectively, “Publicis”). Plaintiffs file solely to correct and clarify the record in light of Publicis’ opposition.

First, Publicis states in its opposition that it was not aware of the Court’s November 7, 2018 scheduling order until November 15, 2018. Opp’n 7. To the extent that Publicis implies that Plaintiffs were somehow at fault for Publicis’ oversight, this is incorrect. Plaintiffs met their obligations under the Local and Federal Rules by serving all of the motion papers to counsel for Publicis on the same day the motion was filed—including the case number. *See* Fed. R. Civ. Proc. 5(a). November 20, 2018 Declaration of Julia Horwitz (“Horwitz Decl.”) at ¶ 2. Plaintiffs subsequently filed a proof of service on November 7, 2018, pursuant to this Court’s Scheduling Order. ECF No. 3.

Second, Publicis states that it responded to the subpoenas on November 9, 2018. Opp’n 7. This is not fully accurate. Even now, Publicis has failed to respond or object to Requests for Documents Nos. 4 and 6, nor has it responded or objected to the deposition requests.

Third, Publicis misstates Plaintiffs’ position during the parties’ November 16 meet-and-confer call.¹ Plaintiffs did not demand that Publicis “produce all information requested,” nor did

¹ Plaintiffs asked Publicis to include Plaintiffs’ November 16 proposal to any opposition filed by Publicis so that this Court could be fully informed. Publicis did not attach Plaintiffs’ proposal, and instead mischaracterized Plaintiffs’ position in its opposition brief.

Plaintiffs refuse to withdraw their motion.² Horwitz Decl. ¶ 3. Rather, Plaintiffs offered to withdraw their motion if Publicis would agree to Plaintiffs' proposed compromise. *Id.* A copy of that proposal is attached to the November 20, 2018 Declaration of Julia Horwitz, filed herewith.

Fourth, Publicis objects that Plaintiffs have served Publicis with redacted documents. Publicis fails to note that Plaintiffs requested on behalf of Publicis that the documents be unsealed. Horwitz Decl. ¶ 4. Facebook agreed to unseal two of the three redacted exhibits, and Plaintiffs removed the corresponding redactions from their motion, and provided all those unredacted materials to Publicis. *Id.* Plaintiffs have further asked Facebook to unseal the remainder of the materials, but Facebook has so far refused. *Id.*

Dated: November 22, 2018

Respectfully submitted,

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² In their response Publicis states, "Plaintiffs refused to withdraw their subpoenas[.]" Plaintiffs assume that Publicis meant to write, "Plaintiffs refuse to withdraw their motion to enforce." For the reasons stated above, this is inaccurate.

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CERTIFICATE OF SERVICE

I certify that, on November 22, 2018, I filed the foregoing via ECF, which sent notification to all counsel of record. I also served the foregoing on counsel for Defendants via email on November 20, 2018.

Dated: November 22, 2018

/s/ *Julia Horwitz*
Julia Horwitz